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David R. Oran

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EXAMINER

ODLAND, DAVID E

ART UNIT

PAPER NUMBER

2662

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/745,387

Applicant(s)

ORAN, DAVID R.

Examiner

David Odland

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 47 is objected to because of the following informalities:

Claim 47 recites that it is dependent on claim 24. However, the limitations of claim 47 are exactly the same as those of claim 35, which also depends on claims 24. Since the limitations of claim 47 and 35 are the same, it appears as though claim 47 was actually meant to depend on independent claim 36. However, for this Office Action claim 47 will be considered as dependent upon claim 24 since it is currently written this way. Appropriate correction is recommended.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 13,22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Gitlin et al. (USPN 5,856,971), hereafter referred to as Gitlin.

Referring to claim 13, an input for detecting a user response to a call (a radio transmitter tracks different bit rate it uses to transmit CDMA packets (see abstract and figure 2)) and a controller configured to dynamically vary adaptation parameters used for transmitting packets making up the call (the radio transmitter dynamically adjusts the bit rate in response to the user input which indicates the desired bit rate (see abstract and figure 2)) according to the user

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response detected by the input (a user input indicates the bit rate the user wishes to use to transmit data (see abstract and figure 2)).

Referring to claim 22, Gitlin discloses the user response determines how much the controller varies the adaptation parameters (the user input indicates a desired bit rate in M multiples (see abstract and column 6)).

Referring to claim 23, Gitlin discloses that the controller varies a rate that rate packets are transmitted and received during the call (the user input indicates a desired bit rate in M multiples (see abstract and column 6)).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1,6,9,11,24,29,32,36,41 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over in view of the Admitted Prior Art of the present application, hereafter referred to as APA.

Referring to claims 1, 24 and 36, Gitlin discloses a method for controlling a call, comprising tracking adaptation schemes used for transmitting packets in a call (a radio transmitter tracks different bit rate it uses to transmit CDMA packets (see abstract and figure 2)), monitoring a user response to the call (a user input indicates the bit rate the user wishes to use to transmit data (see abstract and figure 2)) and dynamically varying the adaptation schemes used

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for transmitting the packets according to the monitored user response (the radio transmitter dynamically adjusts the bit rate in response to the user input which indicates the desired bit rate (see abstract and figure 2)). Gitlin does not disclose that the call is a VoIP call. However, APA discloses that VoIP is an established protocol that is flexible and can adapt to varying service levels (see page 1 of the present specification). It would have been obvious to one skilled in the art at the time of the invention to implement the system of Gitlin using VoIP because it would allow the system to conform to an already flexible and adaptable existing protocol. Note regarding claim 24, Gitlin does not disclose the method is performed using software. However, it would have been obvious to one skilled in the art at the time of the invention to implement the Gitlin system in this manner because the developmental costs of a software implementation are less than that of a hardware based implementation. Furthermore, software is easier to upgrade than hardware.

Referring to claims 6,29 and 41, Gitlin discloses including using a signal generated by an input device to detect the user response during the call (inherently, the user input comes from a signal generated by the users mobile unit (see figure 2 and column 6)).

Referring to claims 9,32 and 44, Gitlin does not disclose decoding Dual Tone Multiple Frequency signals to detect the user response. However, DTMF is an established protocol that allows user to communicate signals to a communications system. It would have been obvious to one skilled in the art at the time of the invention to implement the system of Gitlin using DTMF because it would allow the system to conform to an already existing protocol.

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Referring to claim 11, Gitlin discloses varying codecs used for encoding audio signals into digital data making up the packets (the number of and rate of codecs is altered according to the user input (see figure 2 and abstract)).

6. Claims 2-5,25-28 and 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gitlin in view of APA and further in view of Hanley (USPN 6,198,910), hereafter referred to as Hanley.

Referring to claims 2,25 and 37, Gitlin discloses using a best effort transmission (the CDMA system can be considered a "best effort" method of transmission (see figure 2)). However, Gitlin does not disclose monitoring for an increase in sound quality and reserving resources for that quality. However, Hanley discloses a system wherein monitoring requests to increase sound quality and requesting reservation of network resources during the already established call (dynamically managing call channels as a function of call quality including adjusting parameters such as transmission power (i.e. a network resource) (see claims 8 and 9)). It would have been obvious to one skilled in the art at the time of the invention to implement this feature into Gitlin because doing so would make the system more flexible and user-friendly and would also improve the quality of calls made by the users.

Referring to claims 3,26 and 38, Gitlin does not disclose that the resource reservation involves RSVP. However, it would have been obvious to one skilled in the art at the time of the invention to implement this feature into Gitlin because RSVP is an established standard and so using it would allow the Gitlin system to conform to an established standard.

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Referring to claims 4,27 and 39, Gitlin does not disclose conducting the already established VOIP call using reserved network resources when the requested reservation is accepted and the user response requests additional increases in the sound quality of the VOIP call. However, it would have been obvious to one skilled in the art at the time of the invention to implement this feature into Gitlin because doing so would allow system to be more flexible by continuing to allow for the call to be dynamically adapted.

Referring to claims 5,28 and 40, Gitlin does not disclose including increasing voice coder performance or reducing payload size alter the network resources are reserved. However, these functions are part of the RSVP standard and as mentioned above, RSVP is an established standard and so using is would allow the Gitlin system to conform to an established standard.

7. Claims 7,8,30,31,42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gitlin in view of APA and further in view of Shaanan et al. (USPN 6,332,084), hereafter referred to as Shaanan.

Referring to claims 7,8,30,31,42 and 43, Gitlin does not disclose using a dial or buttons or a graphical user interface on the user input device. However, Shaanan discloses a wireless mobile unit that includes a graphical touch-screen interface that allows the user to communicate with the system (see abstract and figures 1 and 2)). It would have been obvious to one skilled in the art at the time of the invention to implement this feature into Gitlin because doing so would make the system more user friendly.

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8. Claims 10,33 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gitlin in view of APA and further in view of Skemer et al. (USPN 6,570,849), hereafter referred to as Skemer.

Referring to claims 10,33 and 45, Gitlin does not disclose monitoring congestion in a network used for conducting the call and varying the adaptation schemes according to the monitored congestion. However, Skemer discloses a system wherein network congestion is monitored in order to adapt VoIP calls to the changing network congestion and thus provide the proper quality of service for the call (see column 4)). It would have been obvious to one skilled in the art at the time of the invention to implement this feature into Gitlin because doing so would improve the call quality made by the user.

9. Claims 12,35 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gitlin in view of APA and further in view of Albal (USPN 6,668,046), hereafter referred to as Albal.

Referring to claims 12,35 and 47, Gitlin does not disclose detecting a user response selecting a cost for the VOIP call and varying the adaptation schemes according to the selected cost. However, Albal discloses a system wherein a subscriber can choose a particular protocol to use to make a call depending on the associated cost of the call using the particular protocol and the system provides the associated Quality of Service (QOS) in accordance with the particular protocol selected (see column 6)). It would have been obvious to one skilled in the art at the time of the invention to implement this feature into Gitlin because doing so would make the system ore flexible, adaptable and more user friendly.



10. Claims 34 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gitlin in view of APA and further in view of Le (USPN 6,300,887), hereafter referred to as Le.

Referring to claims 34 and 46, Gitlin discloses code for varying codecs used for encoding audio signals into digital data making up the audio packets (the coders encode at a different rate depending on the users input (see abstract and figure 2)) and code for varying a rate that the audio packets are transmitted and received during the call (the coders encode at a different rate depending on the users input (see abstract and figure 2)).

Gitlin does not disclose varying an amount of audio data in the audio packets and adding or removing error correction information from the audio packets. However, Le discloses a system wherein error information is added to packets and the size of VoIP packets varies (see column 2 lines 12-20 and column 3 lines 25-44). It would have been obvious to one skilled in the art at the time of the invention to implement this feature into Gitlin because doing so would make the Gitlin system more flexible, versatile, user friendly and robust.

11. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gitlin in view of Skemer.

Referring to claim 14, Gitlin does not disclose monitoring congestion in a network used for conducting the call and varying the adaptation schemes according to the monitored congestion. However, Skemer discloses a system wherein network congestion is monitored in order to adapt VoIP calls to the changing network congestion and thus provide the proper quality of service for the call (see column 4)). It would have been obvious to one skilled in the art at the

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time of the invention to implement this feature into Gitlin because doing so would improve the call quality made by the user.

12. Claim 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gitlin in view of Hanley.

Referring to claim 15, Gitlin discloses using a best effort transmission (the CDMA system can be considered a “best effort” method of transmission (see figure 2)). However, Gitlin does not disclose monitoring for an increase in sound quality and reserving resources for that quality. However, Hanley discloses a system wherein monitoring requests to increase sound quality and requesting reservation of network resources during the already established call (dynamically managing call channels as a function of call quality including adjusting parameters such as transmission power (i.e. a network resource) (see claims 8 and 9)). It would have been obvious to one skilled in the art at the time of the invention to implement this feature into Gitlin because doing so would make the system more flexible and user-friendly and would also improve the quality of calls made by the users.

Referring to claim 16, Gitlin does not disclose that the resource reservation involves RSVP. However, it would have been obvious to one skilled in the art at the time of the invention to implement this feature into Gitlin because RSVP is an established standard and so using it would allow the Gitlin system to conform to an established standard.

Referring to claim 17, Gitlin does not disclose conducting the already established VOIP call using reserved network resources when the requested reservation is accepted and the user response requests additional increases in the sound quality of the call. However, it would have

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been obvious to one skilled in the art at the time of the invention to implement this feature into Gitlin because doing so would allow system to be more flexible by continuing to allow for the call to be dynamically adapted.

13. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gitlin in view of Shaanan.

Referring to claims 18 and 19, Gitlin does not disclose using a dial or buttons or a graphical user interface on the user input device. However, Shaanan discloses a wireless mobile unit that includes a graphical touch-screen interface that allows the user to communicate with the system (see abstract and figures 1 and 2)). It would have been obvious to one skilled in the art at the time of the invention to implement this feature into Gitlin because doing so would make the system more user friendly.

14. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gitlin in view of Albal.

Referring to claim 20, Gitlin does not disclose detecting a user response selecting a cost for the call and varying the adaptation schemes according to the selected cost. However, Albal discloses a system wherein a subscriber can choose a particular protocol to use to make a call depending on the associated cost of the call using the particular protocol and the system provides the associated Quality of Service (QOS) in accordance with the particular protocol selected (see column 6)). It would have been obvious to one skilled in the art at the time of the invention to

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implement this feature into Gitlin because doing so would make the system ore flexible, adaptable and more user friendly.

15. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gitlin.

Referring to claim 21, Gitlin does not disclose decoding Dual Tone Multiple Frequency signals to detect the user response. However, DTMF is an established protocol that allows user to communicate signals to a communications system. It would have been obvious to one skilled in the art at the time of the invention to implement the system of Gitlin using DTMF because it would allow the system to conform to an already existing protocol.

### *Conclusion*

16. The following prior art, which is made of record and not relied upon, is considered pertinent to applicant's disclosure:

- a. U.S. Patent Number 5,689,557 to Kaplan et al.
- b. U.S. Patent Number 6,611,694 to Oltendal et al.
- c. U.S. Patent Number 6,577,648 to Raisanen et al

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Odland whose telephone number is (571) 272-3096. The examiner can normally be reached on Monday - Friday from 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou, can be reached at (571) 272-3088. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

deo

September 15, 2004



**JOHN PETZLO**  
**PRIMARY EXAMINER**